

BEFORE THE STATE ENGINEER OF OREGON

Harney County

IN THE MATTER OF THE CANCELATION)
ON GROUNDS OF ABANDONMENT OF A)
WATER RIGHT IN THE NAME OF BURNS)
FLOUR MILLING COMPANY)
-----)

FINDINGS OF FACT,
CONCLUSIONS AND ORDER

FINDINGS OF FACT

1. This proceeding was initiated by the State Engineer under the provisions of CRS 540.631 to 540.650 for cancelation on grounds of abandonment of a right to the use of waters of Silvies River for development of 159 theoretical horsepower in Lot 5, Section 36, Township 22 South, Range 30 East, W. M., with a date of priority of 1884, which right was confirmed in the name of the Burns Flour Milling Company by decree on mandate of the Circuit Court for Harney County, Oregon, entered February 23, 1926, in the matter of the determination of the relative rights of the various claimants to the use of the waters of the Silvies River and its tributaries.

2. Notice of the initiation of such proceedings was given by notice dated April 4, 1957 and said notice was sent by registered mail to Edward and Agnes Stallard, Harry Lowe, Enid Gowan and Myrtle Tousley, all of Burns, Oregon, the above-named being the owners and/or occupants of the lands to which the water right was appurtenant.

3. By letter dated May 29, 1957 and received in the office of the State Engineer on June 3, 1957, Mrs. Agnes Stallard protested the cancelation of the water right.

4. By official notice dated June 7, 1957, the State Engineer notified Mrs. Stallard that a hearing on her protest against the proposed cancelation of the water right, would be heard before the State Engineer in the Harney County Courthouse in Burns, Oregon, on Wednesday, June 26, 1957.

5. The hearing was held at the designated time and place with Mrs. Stallard appearing as the protestant and Clarence N. Young, Watermaster of Harney County, appearing as witness for the State Engineer. From the testimony of Mr. Young it appears that the Burns Flour Mill which utilized the water right in question for the development of power was destroyed by fire in 1936 or 1937 and no use of any waters of Silvies River has been made since that date in the development of power at that site. Mrs. Stallard testified also that the water right had not been used since the mill burned and further, that she has had no plans and at present has no plans for any power project at this site.

CONCLUSIONS

The State Engineer concludes on the basis of all the evidence before him that the water right in question has not been utilized since the year 1936 or 1937 and that non-use for a continuous period of twenty years is to be conclusively presumed to be an abandonment of such water right under the provisions of ORS 540.610.

ORDER

It is ORDERED that the water right in question which is for use of 100 cubic feet per second of the waters of Silvies River for the development of 159 theoretical horsepower in Lot 5, Section 36, Township 22 South, Range 30 East, W. M., with a date of priority of 1884, which right was confirmed in the name of the Burns Flour Milling Company by decree on mandate of the Circuit Court for Harney County, Oregon, entered February 23, 1926, in the matter of the determination of the relative rights of the various claimants to the use of the waters of Silvies River and its tributaries, is hereby canceled.

Dated at Salem, Oregon this 5th day of July 1957.

*Noted on Decree
Vol. 9 p. 41.
Name of the
Power Claim #106*

Lewis A. Stanley

LEWIS A. STANLEY
State Engineer